

Serial No. 10/673,893

**R e m a r k s**

Claims 15-34 are pending in the application.

Claims 22-25, 27, 29, 32, and 34 stand allowed.

Claim 25 was amended to fix some inadvertent grammatical errors.

Claims 1-21, 26, 28, 30, 31, and 33 are rejected under 35 U.S.C. 101, the Office Action stating that those claims are drawn to non-statutory subject matter. This ground of rejection is based on the recent CAFC decision in *In re Bilski*.

Applicant respectfully avoids this ground of rejection for the following reasons.

Each of independent claims 1, 20, 26, 28, 30, 31, and 33 have been amended to indicate that the respective method recited therein is performed by an apparatus and that the step recited in each such claim is performed automatically. Thus, it is clear that when each claim is read as a whole no other conclusion can be drawn but that the method is performed by the apparatus, i.e., a machine, that is recited in the preamble. Clearly then, use of a particular machine, i.e., the recited apparatus, is required, and applicant's claim passes muster under the machine prong of the *Bilski* test.

To further buttress the foregoing, applicant notes that by such amendment, the step of the claim is not performed by a person. Also, applicant's claims do not recite a law of nature or a fundamental natural equation. Applicant further notes that the apparatus includes a computer readable media, which has been held to be patentable subject matter.

Thus, applicant's amended claims 1, 20, 26, 28, 30, 31, and 33 are directed to patentable subject matter. So too are their associated dependent claims.

Independent claims 17 and 21 are clearly apparatus claims, not process claims. Thus, by definition, they relate to statutory subject matter and *In re Bilski* is not applicable. Applicant does not understand why these claims and their dependent claims were rejected and requests a specific detailed explanation if these rejection are maintained. Applicant further notes that the apparatus includes a computer readable media, which has been held to be patentable subject matter.

Serial No. 10/673,893

Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

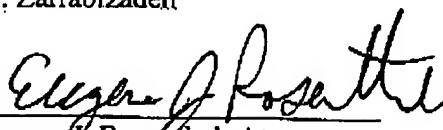
If, however, the Examiner still believes that there are unresolved issues, he is invited to call applicant's attorney so that arrangements may be made to discuss and resolve any such issues.

In the event that an extension of time is required for this amendment to be considered timely, and a petition therefor does not otherwise accompany this amendment, any necessary extension of time is hereby petitioned for, and the Commissioner is authorized to charge the appropriate cost of such petition to the Alcatel-Lucent USA Inc. Deposit Account No. 12-2325.

Respectfully,

M. H. Zarrabizadeh

By

  
Eugene J. Rosenthal, Attorney  
Reg. No. 36,658  
908-582-4323

Alcatel-Lucent USA Inc.

Date:

5/28/09